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REMARKS

The present response is to the Office Action mailed in the above-referenced case on October 17, 2005. Claims 21, 26, 29-31 and 32-36 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Claims 21, 23 and 27-28 are rejected under 35 U.S.C 102(b) as being anticipated by Hageby (U.S. 3,305,990), hereinafter Hageby. Claims 22, 24 and 26 are rejected as being unpatentable over Hageby in view of Valentz et al. (U.S. 6,324,800), hereinafter Valentz.

Applicant has carefully studied the prior art presented by the Examiner, and the Examiner's rejections and statements of the instant Office Action. In response to the Examiner's rejections, applicant herein presents arguments that clearly differentiate applicant's invention over the prior art presented by the Examiner, as well as establishing that the written description of the specification does indeed enable the invention as presently claimed.

Regarding the Examiner's 112 rejection the Examiner has stated that the new claims 21-36 are replete with new matter having no support in the original application, specifically, that the recitation of applicant's claim of "elongated embed", and the last 3 lines of applicant's claim has no antecedent basis in the original specification. Applicant respectfully disagrees.

Applicant points out to the Examiner that applicant's specification specifically describes, with reference to Fig. 3, beginning on page 11, line 8 (D.), "The elongate member 40 (embed) extends longitudinally within the body 20 from an upper end 24 of the body 20 as shown in Figs. 3 through 6b of the drawings. The elongate member 40 is comprised of an elongate rigid structure that may be positioned within an aperture within the body 20 or molded directly within the body 20. The elongate member provides additional support to the body 20 to support post 12".

The Examiner has further stated that the subject matter of claim 22 regarding the material of construction and the elasticity also has no antecedent basis in the original specification. Applicant again respectfully disagrees. Applicant's claim 22 recites "...the

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anchor footing is molded using an elastic molding material..." Applicant's specification describes, with reference to Figs. 1 through 5, that "The body 20 is preferably comprised of a resilient and elastic material such as but not limited to rubber, recycle rubber and the like. Applicant points out that rubber, or recycle rubber is indeed an elastic molding material, and therefore the specification clearly supports the recitation in the claim.

Regarding the Examiner's 102 rejection of claims 21, 23, and 27-28, the Examiner has stated that Hageby discloses applicant's system for anchoring a structural member from below the ground comprising all of applicant's claimed limitations, including that the anchor footing has a predetermined amount of horizontal flex ability as evidenced by element 5b of Hageby, the disclosed compressive stresses and the fastening elements constructed of elastic material, against horizontal force acting on the structural member 3. Applicant again respectfully disagrees with the Examiner.

Hageby specifically describes, with reference to Fig. 2, that if desired, a separate packing 5b may be inserted in an interior, annular recess 5c in fastening element 5a. A lubricant, such as machine oil may be applied thereon, resulting in increased volume of the packing, which in turn results in a firmer connection of the post to the base.

This teaches away from applicant's invention in that firstly, applicant does not claim providing a firmer connection of the post to the base. Applicant claims a flexible pole anchoring system that may be subjected to significant forces without damage to the footing structure within the ground.

Secondly, Hageby specifically teaches, with reference to Fig. 1, a concrete, non-flexible plinth 7 into which a pole is inserted. Hageby does not teach a flexible anchor footing, as in applicant's invention. Elements 5b of Hageby do not afford flexibility of the pole when inserted and affixed to the anchoring system; rather, the elements 5b are designed to provide a more rigid coupling of the pole to the anchor, by virtue of applying the lubricant, such as machine oil, which expands the elements 5b to provide a firmer coupling of the pole to the anchor, and helping to prevent the pole from migrating upward out of the anchor. This is clearly described in the specification of Hageby with reference to Fig. 2.

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It is axiomatic that anticipation of a claim under Section 102 can be found only if the prior art reference discloses every element of the claim. In re King, 801 F.2d 1324, 1326, 231 USPQ 136 138 (Fed. Circ. 1986). See also Lindemann Maschinenfabrik GMBH vs. American Hoist and Derrick, 730 F.2d 1452, 1458, 221 USPQ 481 485 (Fed. Circ. 1984). Applicant respectfully requests that the Examiner please reexamine applicant's claims and provide a reasonable reference that actually discloses at least a considerable portion of the claimed invention. Anticipation of applicant's claims in a prima facie rejection requires the presence in a single disclosure of each and every element of the claimed invention, arranged as in the recited claim, and the Examiner must identify the elements of the claim, determine their meaning in light of the specification, and identify corresponding elements disclosed in the allegedly anticipating reference. The Examiner in this case has clearly failed to do so. Hageby clearly fails to disclose a flexible pole anchoring system, and therefore certainly fails to anticipate applicant's invention.

The Examiner has rejected claims 22, 24 and 26 as unpatentable over Hageby in view of Valentz, stating that the method of making and the material of construction are viewed as a matter of choice. However, applicant stresses that Hageby is an improper primary reference because Hageby does not teach or suggest that the anchor footing has a predetermined amount of horizontal flex ability against horizontal force acting on the structural member, as is taught in applicant's invention and specifically recited in applicant's base claim 21. The patentable heart of applicant's claims is the presence of a rigid member in the anchor surrounded by resilient and elastic material, such that any action tending to displace the above-ground member that is anchored, will result in translation of the rigid member within the elastic material without dislodging the anchor from its earth-bound footing. Hageby, in combination with Valentz, therefore fails to produce applicant's invention as taught and claimed. Applicant's claims are certainly patentable over the combined art that has been cited and applied by the Examiner, and are believed to be easily patentable.

As all of the claims standing for examination as argued above have been shown to be patentable over the art of record, applicant respectfully requests reconsideration and

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that the present case be passed quickly to issue. If there are any time extensions due beyond any extension requested and paid with this amendment, such extensions are hereby requested. If there are any fees due beyond any fees paid with the present amendment, such fees are authorized to be deducted from deposit account 50-0534.

Respectfully Submitted,
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